

FILED
COURT OF APPEALS
DIVISION II

IN THE COURT OF APPEALS STATE OF
WASHINGTON DIVISION TWO
No. 55968-4-II

2022 MAY -4 PM 1:51

STATE OF WASHINGTON

BY

DEPUTY

STATE OF WASHINGTON

Respondant

v

JOHN CAREY

Appellant

STATEMENT OF ADDITIONAL
GROUNDS

Ground 1

The state says that there is no Corroboration required to prove guilt. This has the unfortunate effect of shifting the burden to the defense to disprove the charges, making defense nearly impossible. If the state requires no corroborating evidence to prove the crime occurred, such as;

- 1) Medical proof of injury;
- 2) rape kits;
- 3) actual admittance; and
- 4) witness statements.

How can the defense combat that, what evidence can the defense use to disprove an accusation?

Any law, court rule, or jury instruction that states, implies, or alludes that an accusation does not need to be corroborated, is shifting the burden of proof to the defendant, since the state is not required to prove the sufficiency-of-the-evidence, just present the accusation as fact. Then exclude any evidence that can hurt the credibility of the accuser appealing to the jury's passion to secure a conviction based on emotion (not evidence), while skirting the areas of burden-shifting and denigrating defense counsel's argument. "State v Slater, 197 Wn.2d 660, 682 (2021) (some alteration to original).

The next unfortunate effect of non-corroboration becomes the credibility of the accuser vs. the credibility of the accused, the accuser gains the favor.

When the state and the court deny the use of excited utterance statements made by the accused, can damage the credibility of the defendant, which leads an air of self-serving omission on the part of the state. The Sixth Amendment guarantees that any and all evidence that can potentially show innocence can be presented. How can the state actually know the excluded evidence was harmless?

The state's conjecture that the excited utterance was not done under duress or stress is merely a bold assertion, since the evidence was not presented to the jury for review as to the credibility of the defendant. Therefore, the first two prongs of the excited utterance exception cannot be proved, by the state, or the defendant. As the evidence was never presented to the jury, the jury could not make a determination whether the excited utterance (both the utterance made to the wife and the one made to police) was made out of anger or surprise.

Ground 2

Next, the admittance of the hearsay text "Sent" to his brother was presented as a screenshot from the original phone to the detective's phone (RP at 461-63) by the state was not investigated or verified as to the content, whether it was altered from the original or not. Since, on iPhones, it is easy to change contact entries (name, number, etc) with no visual difference on the text, or that the text was even sent by the defendant. The phone company only keeps records of texts for six months, trial occurred well after this. This should prove that a retrial with the exclusion of the text would be fair, since the text proved prejudicial to the defendant's credibility.

Ground 3

The state uses an incorrect standard to criminal cases "[a]ppellant misstates the applicable test regarding the trial court's exercise of discretion for hearsay-related preliminary fact determination under ER 104(a) by claiming that the sufficiency-of-the-evidence test applies instead of the preponderance-of-the-evidence test. -- In actuality, the preponderance-of-the-evidence test controls hearsay-related questions of preliminary fact." See Brief of Respondant at 17.

Preponderance-of-the-evidence is used in civil matters, not criminal cases, criminal cases are based on sufficiency-of-the-evidence and reasonable doubt.

For example: O.J. Simpson was acquitted in his criminal case due to the sufficiency-of-the-evidence not proving he committed the murders. However, he lost in his civil case due to there being a preponderance-of-the-evidence proving he committed the murders.

This court should agree with the sufficiency-of-the-evidence test as proper for the admittance of evidence in criminal cases.

Ground 4

The exclusion of parks, malls, libraries, etc., or areas that can be used as a "town square" to "bear and be heard" under the First Amendment, and therefore cannot be blocked. *Packingham v. North Carolina*, — U.S. —, 137 S.Ct. 1735, 198 L.Ed.2d 273 (2017).

Ground 5

Lastly, the defendant's Judgement & Sentence does not show any aggravating circumstances under RCW 9.94A.535 (3) to run count 3 consecutively to counts 2 & 4.

Only serious violent offenses under RCW 9.94A.589
(1)(b) can be made to run consecutively, not class C
nonviolent offenses.

Dated this _____ Day of _____.

Respectfully,

FILED
COURT OF APPEALS
DIVISION II

2022 MAY -4 PM # 50

STATE OF WASHINGTON

BY DEPUTY

DECLARATION OF SERVICE BY MAIL

GR 3.1

I, John C. Carey, declare and say:

That on the 29th day of April, 2022, I deposited the following documents in the Stafford Creek Correction Center Legal Mail system, by First Class Mail pre-paid postage, under cause No. 55968-4-II:

STATEMENT OF ADDITIONAL GROUNDS

addressed to the following:

WA Court of Appeals

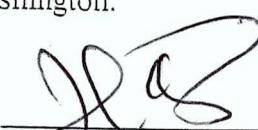
Div. 2

909 Astoria St.

TACOMA, WA 98402

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED THIS 29th day of April, 2022, in the City of Aberdeen, County of Grays Harbor, State of Washington.



Signature

John C. Carey

Print Name

DOC 427336 UNIT H5A-20L
STAFFORD CREEK CORRECTIONS CENTER
191 CONSTANTINE WAY
ABERDEEN WA 98520